United States Department of Labor
Employees' Compensation Appeals Board

A.L., Appellant	)	
and	)	**Docket No. 18-1706**
	)	**Issued: May 20, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Scarsdale, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 11, 2018 appellant, through counsel, filed a timely appeal from a July 10, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the July 10, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include additional left lower extremity conditions causally related to the accepted January 26, 2017 employment injury.

FACTUAL HISTORY

On February 2, 2017 appellant, then a 44-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on January 26, 2017, she sustained an injury to her left knee when her left foot was caught on a seat bracket causing her to lose her balance and twist her left knee while in the performance of duty.

The record includes an executed authorization for examination and/or treatment (Form CA-16), completed by the employing establishment on February 2, 2017. Dr. Mack Sullivan, an emergency medicine specialist, completed the attending physician's portion of the form on the same date and diagnosed a sprain of the medial collateral ligament (MCL) of the left knee.

In a report dated February 2, 2017, Dr. Sullivan examined appellant for complaints of left knee pain. Appellant told Dr. Sullivan that she had twisted her left knee at work on January 25, 2017. On examination, he noted tenderness to palpation along the medial joint of the left knee and a positive McMurray test. Dr. Sullivan diagnosed a sprain of the MCL of the left knee and noted her left knee pain. He recommended rest, ice, immobilization, and elevation pending imaging of the left knee.

A magnetic resonance imaging (MRI) scan of appellant's left knee, taken on February 28, 2017, demonstrated intact medial and lateral menisci as well as intact anterior and posterior cruciate ligaments, quadriceps and patellar tendons, and medial and lateral collateral ligaments. A small joint effusion and chondromalacia of the central femoral trochlear groove with surrounding marrow edema were identified.

On March 1, 2017 Dr. Sullivan followed up with appellant to review her MRI scan. On examination, he noted a large effusion of the left knee. Dr. Sullivan diagnosed left knee chondromalacia patellae and left knee effusion.

In an attending physician's report (Form CA-20) dated March 6, 2017, Dr. Richard Weinstein, a Board-certified orthopedic surgeon, diagnosed patellofemoral osteoarthritis and a sprain of the MCL. He checked a box marked "yes" indicating that her condition had been caused or aggravated by an employment activity and recommended that she undergo physical therapy, use anti-inflammatory medication, and consider cortisone injections.

On March 20, 2017 Dr. Weinstein examined appellant to follow up for complaints of left knee pain after an injury at work on January 26, 2017. Appellant told Dr. Weinstein that she had stepped out of her truck when her foot became caught in the seat and she twisted her knee. She continued working for a week while walking with a limp and stopped work on February 2, 2017. On examination of the left knee, Dr. Weinstein noted minimal swelling, mild medial joint line tenderness, tenderness at the insertion of the MCL, mild tenderness of the pes bursa, slight patellofemoral crepitus, a positive flexion pinch, and discomfort with a McMurray test. Reviewing

an MRI scan of appellant's left knee, Dr. Weinstein observed mild effusion and chondromalacia patella with no meniscal tears and intact anterior and posterior cruciate ligaments. He noted his impression that appellant was five weeks' status post a left knee MCL sprain with underlying patellofemoral osteoarthritis. He recommended physical therapy and avoiding heavy lifting and overhead activities.

In a report dated April 3, 2017, Dr. Weinstein noted that appellant continued to experience sharp pain in the left knee with no swelling. The pain was worse on stairs and severe with twisting of the knee. On examination of the left knee, Dr. Weinstein noted moderate tenderness in the medial and lateral joint lines, effusion, no instability, negative posterior draw, negative varus and valgus instability, marked patellofemoral crepitus, and slight weakness of the quadriceps. He noted that a previous MRI scan had demonstrated damage of the trochlea, but no tearing of the meniscus. Dr. Weinstein noted his impression of left knee pain with damage of the patellofemoral joint, which improved with physical therapy and continued symptoms.

On April 24, 2017 Dr. Weinstein followed up with appellant for complaints of left knee pain on the anterior medial aspect. On examination of the left knee, he noted slight effusion, marked medial joint tenderness, minimal lateral joint line tenderness, intact ligament stability, full extension of range of motion, patellofemoral crepitus, a positive flexion pinch, and a positive McMurray test. Dr. Weinstein noted continued left knee pain three months status post a work injury with most probable medial meniscus tear symptoms, which failed to improve with conservative treatment. He recommended a left knee arthroscopy.

By letter dated May 10, 2017, Dr. Weinstein noted that he had first seen appellant on March 6, 2017 for a left knee injury at work on January 26, 2017 when stepping off a truck. Appellant told Dr. Weinstein that her foot became caught and she twisted her knee. Dr. Weinstein indicated that he had reviewed a left knee MRI scan, which demonstrated medial meniscus degeneration and patellofemoral wear. He diagnosed a left medial meniscus tear and a traumatic injury to the patellofemoral joint with chondromalacia. Dr. Weinstein noted that these diagnoses were from the incident of January 26, 2017 and that appellant had no preexisting pathology. He requested authorization for arthroscopy.

By decision dated June 2, 2017, OWCP denied appellant's traumatic injury claim. It found that the medical evidence submitted was insufficient to establish a left knee injury caused or aggravated by the accepted January 26, 2017 employment incident.

On June 26, 2017 appellant requested a review of the written record before an OWCP hearing representative. With her request, she submitted a June 19, 2017 report from Dr. Weinstein, in which he noted that she continued to have pain in the left knee. On examination, Dr. Weinstein noted medial tenderness and mild lateral tenderness with effusion, no instability, a negative Lachman test, a negative posterior draw, negative varus/valgus instability, positive flexion pinch, range of motion to 120 degrees with pain on full flexion, a positive McMurray test, and mild crepitus. Dr. Weinstein reviewed a left knee MRI scan, which he noted demonstrated a grade 2 medial meniscus with possible tearing and mild patellofemoral arthritis. He concluded that appellant required arthroscopic surgery of the left knee due to the January 26, 2017 work incident.

In an attending physician's report dated April 25, 2017, Dr. Weinstein diagnosed left knee sprain with patellofemoral osteoarthritis and a medial meniscus tear. He checked a box marked

"yes" that her condition was caused or aggravated by employment activity, noting that she had twisted her left knee while at work.

By decision dated October 19, 2017, the hearing representative found that appellant had met her burden of proof to establish a strain of the medial collateral ligament of her left knee, causally related to the employment incident of January 26, 2017. She further found that there was insufficient evidence to demonstrate that she sustained a tear of the MCL, because diagnostic testing found no ligamentous tears, and that there was insufficient evidence to establish that osteoarthritis or chondromalacia were linked to the injury of January 26, 2017.

By letter dated October 11, 2017, Dr. Weinstein noted that appellant had injured her knee at work on January 16, 2017 after twisting it. He noted that she had no prior knee problems and attempted physical therapy, but continued to have significant issues with her knee. Dr. Weinstein indicated that he performed surgery on appellant's left knee on September 28, 2017, finding a tear of the left medial meniscus with a lesion of the medial femoral condyle and distal patella, as well as synovitis of the knee and effusion. He noted that all of these conditions were consistent with a twisting injury to the knee, and that while appellant's chondromalacia may have preexisted the incident, she had no symptoms prior to her injury at work. Dr. Weinstein opined, "I can say with absolute medical certainty that the accident of [January 26, 2017] because (sic) all the problems in her knee and necessitated the surgery being performed." In an attached operative report dated September 28, 2017, Dr. Weinstein described performing a left knee partial medial meniscectomy, a synovectomy of all three compartments of the knee, abrasion chondroplasty of the medial femoral condyle and patella, and an injection of the knee. Inspection of the medial joint demonstrated a very small tear of the medial meniscus. The procedures were completed without complication.

On November 6, 2017 OWCP accepted appellant's claim for a sprain of the medial collateral ligament of the left knee.

Appellant submitted an October 6, 2017 report from a physician assistant. She submitted a March 27, 2018 letter signed by the same physician assistant, in which it was noted that appellant had not returned to work since February 2, 2017. Appellant also submitted notes from physical therapists dated from March 6 through May 12, 2017.

On April 16, 2018 appellant, through counsel, requested reconsideration of OWCP's October 19, 2017 decision.

By decision dated July 10, 2018, OWCP denied modification of the October 19, 2017 decision, finding that appellant had not submitted sufficient medical evidence to warrant expansion of her accepted claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable

[4] *Supra* note 2.

time limitation of FECA,[5] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[6] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[8]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[9] A physician's opinion on whether there is causal relationship between the diagnosed condition and an employment incident must be based on a complete factual and medical background.[10] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[11]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include additional left lower extremity conditions causally related to the accepted January 26, 2017 employment injury.

In support of expansion of the accepted conditions, appellant submitted a series of medical reports from attending physicians, Drs. Sullivan and Weinstein.

[5] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *See T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[9] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[11] *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

In reports dated February 2 and March 1, 2017 Dr. Sullivan noted that appellant had twisted her left knee at work on January 25, 2017. He diagnosed a sprain of the MCL of the left knee and recommended diagnostic study of the knee. Following a left knee MRI scan Dr. Sullivan noted that it showed a large effusion of the left knee. He diagnosed left knee chondromalacia patellae and left knee effusion. In his reports Dr. Sullivan did not provide an opinion as to the cause of these additional left knee conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13] These reports, therefore, are insufficient to establish expansion of the acceptance of appellant's claim.

In an attending physician's report dated March 6, 2017 and an attending physician's report dated April 25, 2017, Dr. Weinstein checked boxes marked "yes" to the question of whether appellant's condition had been caused or aggravated by an employment activity. The Board has held, however, that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment incident caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.[14]

In reports dated March 6 and April 25, 2017, Dr. Weinstein examined appellant to follow up for complaints of left knee pain. He diagnosed left knee sprain with patellofemoral osteoarthritis and a medial meniscus tear. While these reports contained descriptions of appellant's history of injury, such generalized statements are insufficient to establish causal relationship because they merely repeat appellant's assertions and are unsupported by adequate medical rationale.[15] The mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.[16] Without explaining physiologically how the accepted employment incident caused or contributed to the additional diagnosed conditions, the physician's reports are of limited probative value.[17]

In a March 20, 2017 report, Dr. Weinstein noted that upon examination appellant exhibited minimal swelling, mild medial joint line tenderness, tenderness at the insertion of the MCL, mild tenderness of the pes bursa, slight patellofemoral crepitus, a positive flexion pinch, and discomfort with McMurray testing. He recommended physical therapy and noted that appellant should avoid heavy lifting and overhead activities. The March 20, 2017 report does not contain an opinion on causal relationship and therefore is of no probative value.[18]

In reports dated April 3 and 24, May 10, and June 19, 2017, Dr. Weinstein noted that he had reviewed a left knee MRI scan which demonstrated medial meniscus degeneration and patellofemoral wear. He noted that these diagnoses were from the incident of January 26, 2017 and that appellant had no preexisting pathology. Dr. Weinstein noted that appellant continued to

[13] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *See R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006).

[15] *See G.O.*, Docket No. 16-0311 (issued June 14, 2016); *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

[16] *See J.G.*, Docket No. 17-1382 (issued October 18, 2017).

[17] *See A.B.*, Docket No. 16-1163 (issued September 8, 2017).

[18] *Supra* note 13.

have pain in the left knee, and he noted that she required arthroscopic surgery of the left knee due to the incident of January 26, 2017 at work. In these reports Dr. Weinstein made conclusory statements that appellant's knee conditions and pain were due to the January 26, 2017 employment incident. While he provided a conclusory opinion, he did not explain how the accepted employment injury had caused or aggravated additional left knee conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was causally related to employment factors.[19] Also, while Dr. Weinstein opined that appellant's left knee conditions were caused by the injury of January 26, 2017, he did not provide a reasoned explanation of the biomechanical mechanism of injury, nor did he differentiate between appellant's current conditions and her preexisting left knee chondromalacia and/or osteoarthritis.[20]

On October 11, 2017 Dr. Weinstein reported that appellant had injured her left knee at work on January 16, 2017 after twisting it. He indicated that he had performed surgery on appellant's left knee on September 28, 2017, finding a tear of the left medial meniscus with a lesion of the medial femoral condyle and distal patella, as well as synovitis of the knee and effusion. Dr. Weinstein noted that all of these conditions were consistent with a twisting injury to the knee, and that while appellant's chondromalacia may have preexisted the incident, there were no symptoms prior to the injury at work. He opined that the January 26, 2017 employment incident was the cause of all the problems in her knee and necessitated the surgery. The Board has held, however, that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support causal relationship. The Board finds that Dr. Weinstein has not provided the necessary rationale and therefore the October 11, 2017 report is insufficient to establish expansion of the acceptance of appellant's claim.

Appellant submitted the results of an MRI scan dated February 28, 2017, which demonstrated an intact MCL and the operative report of the surgery performed by Dr. Weinstein which described inspection of the left knee's medial joint demonstrating a very small tear of the medial meniscus. As the MRI scan and operative report did not contain an opinion on the issue of causal relationship, this medical evidence is insufficient to meet appellant's burden of proof regarding expansion of her claim.[21]

Finally, appellant submitted October 6, 2017 and March 27, 2018 reports signed by a physician assistant. She also submitted notes from physical therapists dated from March 6 through May 12, 2017. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[22]

[19] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[20] *See S.F.*, Docket No. 18-0444 (issued October 4, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *L.B.*, Docket No. 14-1687 (issued June 10, 2015).

[21] *Supra* note 13.

[22] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

Consequently, their medical findings and/or opinions do not suffice for purposes of establishing entitlement to FECA benefits.[23]

Appellant failed to provide reasoned medical evidence demonstrating that her additional left lower extremity conditions were causally related to the accepted January 26, 2017 employment injury. Accordingly, the Board finds that she has not met her burden of proof to establish expansion of the accepted conditions of her claim.[24]

Appellant may submit new evidence or argument with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include additional left lower extremity conditions causally related to the accepted January 26, 2017 employment injury.[25]

[23] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[24] *Id.*

[25] The Board notes that the employing establishment issued appellant a signed authorization for examination and/or treatment (Form CA-16) authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. §§ 10.300, 10.304; *R.W.*, Docket No. 18-0894 (issued December 4, 2018).

ORDER

IT IS HEREBY ORDERED THAT the July 10, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board